UNITED STATES PATENT AND TRADEMARK OFFICE

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George J. Awad
WOODCOCK WASHBURN KURTZ
MACKIEWICZ & NORRIS LLP
One Liberty Place - 46th Floor
Philadelphia, PA 19103

EXAMINER
HEWITT II, CALVIN L

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 28

Application Number: 09/676,448
Filing Date: September 29, 2000
Appellant(s): CARTWRIGHT, SHAWN D.

George Awad Reg. No. 46,528
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 09 June 2003.

(1) Real Party in Interest

(2) Related Appeals and Interferences

The brief does not contain a statement identifying the related appeals and

interferences which will directly affect or be directly affected by or have a bearing on the

decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3)   Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4)   Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5)   Summary of Invention

The summary of invention contained in the brief is correct.

(6)   Issues

The appellant's statement of the issues in the brief is correct.

(7)   Grouping of Claims

Appellant's brief includes a statement that claims 47, 48, 50, 52, 53, 55-61, 63-65, 67 and 68 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8)   Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9)   Prior Art of Record

| 6,119,229 | MARTINEZ et al. | 9-2000 |
| 6,385,592 | ANGLES et al. | 5-2002 |

http://happypuppy.com/games/faqcht/index.html- "Happy Puppy Cheats &Hints",

NetGuide, vol.3 Issue 5, May 96

(10)   Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Response to Amendments/Arguments

"Happy Puppy Cheats" is valid prior art. NetGuide was a magazine that

covered internet, computer and software related issues from 01 December 1994

to 31 August 1997. Netguide regularly contained a gaming section,

Cyberguide:Games, authored by Adam Martini and Daniel Bubbeo. In the

May96, vol. 3, issue 5, page 111, edition, authors Martini and Bubbeo reviewed

and ranked www sites that offered information on various games. In particular,

they highlighted a website called Happy Puppy Cheats & Hints,

happypuppy.com/games/faqcht/index.html., that offered cheats, FAQs and "walk

throughs" of about 100 popular titles. The Examiner would like to point out that

the newly cited references (EBSCO HOST research database-web7.epnet.com

and "The Wayback Machine"- webarchive.org) are being provided only to

establish the existence of the Happy Puppy Cheats website prior to the present application.

Applicant's arguments with respect to claims 47, 48, 50, 52, 53, 55-61, 63-65, 67, and 68 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

Claims 47, 48, 50, 52, 53, 55-61, 63-65, 67, and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martinez et al., 6,119,229 in view of happypuppy.com and Angles et al., U.S. Patent No. 6,385,592.

As per claims 47, 48, 50, 52, 53, 55-61, 63-65, 67, and 68, Martinez et al. teach a computer transaction system for obtaining digital objects within a gaming environment over a communications network (column 3, lines 1-50; column 4, lines 32-64; column 8, lines 13-48; column 29, lines 29-60). Martinez et al. also teach:

- tracking, tallying and storing the executed transactions relating to the (column/line 15/42-16/17; column/line 16/47-18/9; column/line 20/20-21/11; column 21, lines 58-67)

- receiving requests for, obtaining, accessing (through the execution of a transaction) and activating data that can be used within a gaming

environment (column 8, lines 30-40; column/line 10/57-11/16; column 13,

lines 29-36)

- transaction related billing and communicating bill amounts to a

    cooperating computing environment (column/line 8/51-9/54; column 16,

    lines 12-16; column/line 19/22-20/20)

- billing on a per user basis (column 6, lines 38-67)

- displays account in real-time while game is being played (figure 5; column

    11, lines 8-16)

Regarding associating the number of executed transactions to the identified

game, Martinez et al. teach that every transaction is logged and that the log can

be used to restore databases should data become corrupt or lost. Hence, it is at

least obvious that transactions are identified with the game in order to properly

associate users with their objects (column/line 10/13-11/57; column 20, lines 21-

67). Martinez et al. also recite a plurality of billing models (column 19, lines 21-

59). Therefore, it would have been obvious to one of ordinary skill to manage

accounts on a per-transaction or per-user basis. Regarding billing based on the

set of rules being accessed it would have been obvious to one of ordinary skill to

charge different fees for the different game usable data offered by the Martinez et

al. system (e.g. spells, abilities...etc.) (column 8, lines 17-25). However, Martinez

et al. do not explicitly recite obtaining a second set of rules that allows for

cheating. Happy Puppy Cheats is a website that allows users to obtain computer

game cheat codes while, Angles et al. teach a method and system for integrating

user specific advertisements (e.g. offers) into a gaming environment (abstract;

column/line 2/62-4/19; column/line 21/45-22/20). Angles also teaches a plurality

of billing and payment models, such as each time a rule is triggered (i.e.

advertisement is displayed) (column 16, lines 10-57). Therefore, it would have

been obvious to one of ordinary skill to combine the teachings of Martinez et al.,

Happy Puppy Cheats and Angles et al. in order to deliver customized advertising

and allow users to make purchases in response to said advertisement in an

interactive environment such as interactive games ('592, column 2, lines 48-62;

column 4, lines 8-18; column 22, lines 6-20).

(11)   *Response to Argument*

Initially, the Examiner would like to address the Appellant's issue with the

Examiner's conduct. The Examiner's rejection is based solely on the prior art of

Martinez et al., happypuppy.com and Angles et al.. By referring to <u>Electronic Gaming</u>

<u>Monthly</u> offering readers hints, cheat codes and the like, and California's pollution credit

system the Examiner was merely being courteous by appraising the Appellant of the

state of the prior art regarding systems that allows for the circumventing of rules. For

completeness, the Examiner also referred to a Seinfeld episode where Jerry and co.

offered the maitre d' money to allow them to "jump" the line. Regarding the Examiner's

opinion of the Appellant's system- to one of ordinary skill the prior art renders the

Appellant's claims obvious.

Definitions

To one of ordinary skill:

Cheat- A way of giving the player an extra advantage in the game, outside of the

normal ways allowed by the game itself. In single player games **the game developers**

often add "cheat codes" to allow the player to cheat at his discretion

(http://help.game.net/newgamers/terms.asp).

Patch- Patching is a common means of adding a feature or a function to a program until

the next version of the software is released (Microsoft Press Computer Dictionary Third

Edition). Files produced by a game's developer to fix "bugs", add new things to a game

or change current things in the game. The player will generally have to **download** the

latest patch to be able to play the game (http://help.game.net/newgamers/terms.asp).

The Appellant defines "cheat" as an "advantage" that allows users to, "gain

status, power, provide entertainment, or give rights they would not normally have"

(Specification, page 7, lines 3-5) or a feature and/or element that "assist participating

users to overcome frequently presented challenges" (Specification, page 7, lines 11-13).

The Appellant's system looks to provide gamers access to advantages or "cheats"

outside of the "normal" game flow (Specification, page 2, lines 15-19). This is clearly

taught by Martinez et al. as their Virtual Property System allows users to obtain

attributes for a character, for example, that the character does not presently possess

(otherwise why would the user obtain the attribute) in a computerized environment.

Specifically, the Martinez et al. system allows users to obtain for a fee, digital tools,

characters, keys, spells, levels, abilities and behaviors ('229, column/line 3/65-4/31;

column 8, lines 13-25). The Appellant's example of a user obtaining "ammunition"

(Specification, page 12, lines 3-15) certainly falls into of the aforementioned categories

(e.g. tools, levels, abilities, behaviors).

Martinez et al. look to prevent certain kinds **but not all** of cheating (column 4,

lines 24-26; column/line 27/34-28/3). After all, Martinez et al. do provide for the

obtaining of digital objects through digital "plundering", "brute force" and/or "trickery"

('229, column 10,lines 64-67). The question has to be asked, what does it mean to

cheat? Using the plain old dictionary definition (Webster's Ninth New Collegiate

Dictionary) "to cheat" meaning "depriving of something valuable through deceit or

fraud", "to practice fraud or trickery", or "to violate rules dishonestly" is not supported by

the Appellant's Specification. On the other hand, using the Appellant's own definition,

where to "cheat" is equivalent to gaining an advantage, Martinez et al., as we have

seen, clearly teaches this limitation (note: Martinez et al. do refer to obtaining objects by

trickery ('229, column 10,lines 64-67). Nonetheless, by Appellant's own admission,

Happy Puppy Cheats teaches obtaining cheats in computer gaming environments

(Appeal Brief, page 7, lines 1-3). The Appellant attempts to marginalize the Happy

Puppy Cheats system by stating that it fails to teach *an integrated mechanism within a*

game, having a first set of rules, that provides a second set of rules that allows for the

first set of rules to be cheated (Appeal Brief, page 7, lines 5-9). In response, the

Appellant is overlooking the fact that the Examiner has relied on Martinez et al. for such

a teaching and it has been held that one cannot show nonobviousness by attacking

references individually where the rejections are based on combinations of references (*In*

re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800

F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986)). Specifically, the Martinez et al. transaction

system allows users to obtain advantages during game play (column/line 11/57-12/16).

Nonetheless, the *"integrated mechanism..."* limitation is taught by both Martinez et al.

and Happy Puppy Cheats. Initially the Examiner would like to point out the breadth of

this limitation. Computer games, like all computer-implemented instructions, contain

"rules". Hence, the limitation is broad enough to read on a game environment prior to a

user obtaining digital tools, characters, keys, spells, levels, abilities and behaviors

[Martinez et al.] ('229, column/line 3/65-4/31; column 8, lines 13-25) or "**cheat codes**"

and/or **patches** [Happy Puppy Cheats] (HappyPuppy website,

http://web.archive.org/web/19961219232833/happypuppy.com/indexa.html, page 1) and

the gaming environment after the user has implemented the obtained digital tools,

cheat codes, patches, abilities...etc., where the first set of rules are the computerized instructions that control the game before the user obtains the tools, **cheat codes**...etc. and the second set of rules are the tools, **cheat codes, patches**...etc. and/or computerized instructions that allow a computer to digitally render said tools, **cheat codes, patches**...etc..

Therefore, it would have been obvious to one of ordinary skill to combine the system of Martinez et al. and Happy Puppy in order to allow a user to obtain knowledge of or specific codes that would enable a user to make use, for a fee, of hidden, secret or newly created game developer codes to enhance game play.

Conclusion

Appellant's arguments are not persuasive in that they seriously fail to give fair credit to the level and knowledge of those of ordinary skill in the art of computer game developers and "gamers". In order to remedy the Appellant's clear lack of understanding of the art, the Appellant attempts to rely on "the no motivation or suggestion to combine" argument to overcome the prior art. However, it has been held that:

- a reference is to be considered not for what it expressly states, but for what it would reasonably have suggested to one of ordinary skill of the art (*In re Delisle*, 160USPQ 806 (CCPA 1969))

- In considering disclosure of reference patent, it is pertinent to point out not only specific teachings of patent but also the **reasonable inferences** which one

skilled in the art would logically draw therefrom. *(In re Shepard*, 138 USPQ 148

(CCPA 1963))

- [a] problem cannot be approached on basis that workers in the art would know

  only what they could read in references; those skilled in radiator art must be

  presumed to know something about radiators **apart from what references**

  disclose *(In re Jacoby*, 135 USPQ 317 (CCPA 1962))

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Calvin Loyd Hewitt II
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Conferees
James P. Trammell

John Hayes

George J. Awad
WOODCOCK WASHBURN KURTZ
MACKIEWICZ & NORRIS LLP
One Liberty Place - 46th Floor
Philadelphia, PA 19103
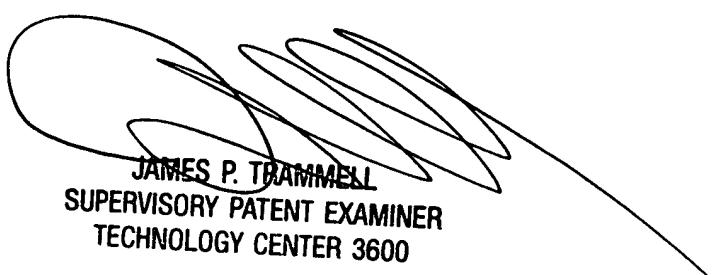
JAMES P. TRAMMELL
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600
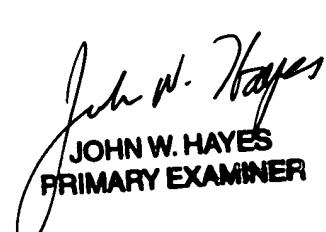
JOHN W. HAYES
PRIMARY EXAMINER